
IN THE
United States Court of Appeals
FOR THE NINTH CIRCUIT

No. 22261

THOMAS JERRY YEATER,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

PETITION FOR REHEARING

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Comes now the appellant, by his attorney, and files this his Petition for Rehearing of Judgment entered by the Court on June 27, 1968, affirming the judgment of the court below.

Appellant reserves his argued position as to each of the points of appeal, but in this petition addresses himself solely to certain features of the decision wherein he believes the Court may be convinced its opinion should be reversed.

Appellant respectfully urges that the opinion overlooks a feature of the case, presented in oral argument,

namely, that the action of the board on May 16, 1966 [Ex. 118] postponing the Order to Report for Induction "until FURTHER NOTICE" gave appellant a new start, a rebirth, in his Selective Service System life.

During oral argument appellant cited *Hamilton v. Commanding Officer*, 9 Cir., 1964, 328 F.2d 799, 802 and gave the clerk the tip-in sheets for this citation. *Hamilton* shows that such a postponement is actually a cancellation.

Thus, appellant's prior failure to administratively appeal was immaterial.

Respectfully, appellant asserts (1) this born-anew posture requires reopening by the local board and (2) the board's neglect to reopen presents a plain, fundamental error involving appellate cognizance.

Counsel further represents and certifies: In counsel's judgment this Petition is well founded and is not interposed for delay.

J. B. TIETZ

Attorney for Appellant

July 26, 1968.